



NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**ADDRESSING ILLEGAL IMMIGRANTS INSIDE THE
UNITED STATES: A POLICY ANALYSIS**

by

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March 2007

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REPORT DOCUMENTATION PAGE			<i>Form Approved OMB No. 0704-0188</i>	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.				
1. AGENCY USE ONLY (Leave blank)		2. REPORT DATE March 2007	3. REPORT TYPE AND DATES COVERED Master's Thesis	
4. TITLE AND SUBTITLE Addressing Illegal Immigrants Inside the United States: A Policy Analysis			5. FUNDING NUMBERS	
6. AUTHOR Jared G. King				
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000			8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A			10. SPONSORING/MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.				
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited			12b. DISTRIBUTION CODE A	
13. ABSTRACT <p>This thesis analyzes past, current, and proposed immigration policies that address illegal immigrants living inside the United States. Although these policies were each developed under different circumstances, they all shed light on the future challenges regarding immigration control. These policies are synthesized to show what components of each will be most effective. The overall objective is to promote a comprehensive strategy that both manages illegal immigrants already inside the United States and creates a legal path for future immigrants to follow.</p>				
14. SUBJECT TERMS Immigration, IRCA, CIRA, illegal immigration, US-VISIT program,			15. NUMBER OF PAGES 61	
			16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT UL	

NSN 7540-01-280-5500

Standard Form 298 (Rev. 2-89)
Prescribed by ANSI Std. Z39-18

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**ADDRESSING ILLEGAL IMMIGRANTS INSIDE THE UNITED STATES: A
POLICY ANALYSIS**

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DoD Civilian
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Submitted in partial fulfillment of the
requirements for the degree of

MASTER OF ARTS IN SECURITY STUDIES

from the

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ABSTRACT

This thesis analyzes past, current, and proposed immigration policies that address illegal immigrants already living inside the United States. Although these policies were each developed under different circumstances, they all shed light on the future challenges regarding this issue. These policies were synthesized to show what components of each will be most effective for future policies. The overall objective is to promote a comprehensive strategy that both manages illegal immigrants already inside the United States and develops a legal path for future immigrants to follow.

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ACKNOWLEDGMENTS

This paper is dedicated to my grandfather, Gregorio Ybarra, who worked in the agricultural fields in Southern California for over 30 years. Although my grandfather never received any formal education throughout his life, he always made the most of the opportunities that were given to him. Because of programs like the Immigration Reform and Control Act, my grandfather was able to become an American citizen and fulfill his dreams in America. Gregorio built an empire with strong hands, black tweezers, and unrelenting perseverance. He believed that owning land was the core of being an American citizen. When he died at the age of 90, he had owned three houses in Southern California, one of which, my grandmother still lives in. My grandfather's personal achievements are tributes to programs like IRCA because his strong work ethic, discipline, and vision are proof that the "American Dream" is still alive. I thank him for teaching me that.

I would like to acknowledge and give thanks to Dr. Michael Freeman for reinforcing a philosophic outlook towards National Security studies. His passion and expertise in this field is contagious and I will take it with me. I would also like to thank Dr. Daniel Moran for stepping in for Dr. Brian Swanland as my Second Reader. This has meant a great deal for me. Last but not least, I would like to thank my wife, Major Stephanie King, for her persistence throughout the whole Naval Postgraduate School experience. Because of her unconditional support, I was able to focus large amounts of time towards my thesis. To my newborn son, Noah, I promise to make up for lost time.

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I. INTRODUCTION

A. PURPOSE

Since the early 1990s, illegal immigration in the United States, particularly from Mexico, has increased markedly compared to historical norms. As a result, millions of undocumented and unauthorized Mexicans live and work inside the United States. This thesis will examine possible government options with regard to managing the potential problems associated with illegal immigrants. The overall objective is to examine past, present, and proposed policies to recommend policy components that may establish accountability, improve integration methods, reinforce national security efforts, and maintain the supply of labor that illegal immigrants currently provide.

B. BACKGROUND OF UNITED STATES IMMIGRATION POLICY WITH MEXICO

1. Brief History of Immigration Policy

Mexican migration to the United States has a long history which has existed since Texas, New Mexico, Arizona, and California became states, and/or U.S. territories, in the mid-1800s.¹ Since Mexicans made up the majority of demographics of these newly adopted territories, they essentially became foreigners in their own land over night.² The porous nature of borders during this time facilitated ease of travel between Mexico and the United States.

Sanctioned immigration of Mexicans, on the other hand, into the United States significantly began in the early 1900s in response to United States labor shortages that occurred during both World War I and II.³ During both World Wars, United States immigration policies generally welcomed immigrants, which in turn, gave way to

¹ Richard Griswold del Castillo and Arnolde De Leon, *North to Aztlan: A History of Mexican Americans in the United States* (New York, Twayne Publishers, 1997), 60. "In 1850, New Mexico had some 62,000 to 77,000 residents; Californians, 9,100 to 14,230; Texas, 13,900 to 23,200; and Arizona, 1,000 to 1,600." These estimates are provided to show that there was a significant Mexican population already established in Texas, Arizona, New Mexico, and California.

² Ibid., 60.

³ Ibid., 60.

millions of European immigrants.⁴ In response to the unanticipated flow of European immigrants that arrived by the mid-1900s, the National Origins Act was developed and put into law in 1924, which limited the amount of Europeans that could enter the United States.⁵ Mexicans were purposely excluded from these newly adopted provisions because they fulfilled a critical labor function in the American economy. The demand for unskilled labor continued to increase in the post-war era.

In response to the growing demands of labor, the “*Bracero Program*” was introduced and put into law. The program was a negotiation between Mexico and the United States, which regulated an increased flow of Mexican migrants into the United States.⁶ Under this program, over 4 million Mexican workers came to the United States over a 22-year span.⁷ The Mexican workers, under this program, fulfilled critical labor requirements in various fields that contributed to the “affluent society” that occurred in the 1950s; they include railroad industry, farming, and agriculture.

Immigration policies with Mexico have often alternated between years of restrictiveness and encouragement based on the economic demands of its time. Unfortunately, the unpredictable nature of United States economy and the United States historical ties with Mexico have contributed to the illegal market of labor today.

2. Changing Roles of Immigration after 9/11: From Economic Interests to National Security

When the United States was attacked on September 11, 2001, the perception of immigration changed when it was revealed by the 9/11 Commission that “15 of the hijackers could have been intercepted or deported through more diligent enforcement of immigration laws.”⁸ In response to the 9/11 Commission Report, the Department of Homeland Security was created, which is an organization designed to thwart terrorist

⁴ Patrick Buchanan, “*STATE of EMERGENCY: The Third World Invasion and Conquest of America*” (New York, St. Martin’s Press, 2006), 19–35.

⁵ del Castillo, “*North to Aztlan: A History of Mexican Americans in the United States*,” 60.

⁶ Mario T. Garcia, “*Memories of Chicano History: The Life and Narrative of Bert Corona*” (Los Angeles, University of California Press, 1994).

⁷ Ibid.

⁸ Michael Garcia, “*9/11 Commission: Current Legislative Proposals for U.S. Immigration Law and Policy*,” Congressional Research Service Report for Congress (CRS Order Code RL32616), available (<http://www.senate.gov/~hutchison/RL32616.pdf>), accessed February 16, 2007.

threats against the United States. Immigration today is part of a national security effort to secure the homeland which has created new challenges for immigration. On one hand, there is the need to satisfy the interests of commerce and trade which has given the United States the economic edge over the rest of the world for the past 50 years. On the other hand, there is a new threat that requires the United States government to monitor those who enter the United States, which restricts the level of input and output of commerce, people, and trade. Ultimately, this has resulted in trade-off policies that attempt to strike the balance between economic prosperity and national security.

Over the last several decades, there have been a number of programs put in place that address unauthorized aliens inside the United States; they include The Immigration Reform and Control Act of 1986, The Enhanced Border Security and Visa Entry Reform Act of 2002, and The Comprehensive Immigration Reform Act. These reforms are critical to understanding some of the major challenges that face immigration today because they demonstrate the effectiveness of certain policy components, identify implementation issues, and expose unintended consequences.

The struggle to control immigration has evolved over time. While some policies have proved to be successful, others continue to reinforce “status quo”. This thesis will explore past and present policies, particularly ones that address illegal immigrants, with hopes to provide the government with effectual options for the future.

C. METHODOLOGY

A comparative analysis of immigration policy will be the primary approach of this thesis. While the main emphasis of the thesis focuses on evaluating the relative merits of past, current, and proposed plans, the overall purpose will be to recommend the best policy components in relation to the current problems associated with illegal immigrants already living inside the United States.

The literature review will set the stage by defining the traditional roles of Mexican immigration up to 2001 and the changing priorities that followed 9/11.

Contextualizing immigration is particularly important for this thesis because many of the problems concerning illegal immigrants were not “perceived” as national security problems prior to 2001.

The second part of the thesis, Chapters II–IV, will examine immigration components of several policies over the last 20 years. Chapter II will focus on immigration components from The Immigration Reform and Control Act of 1986, to show some of the successes and failures of previous immigration policies. Chapter III will analyze The Enhanced Border Security and Visa Entry Reform Act of 2002, which consists of significant components that fundamental for immigration reform. The primary focus of this chapter is to show what is currently being done to address illegal immigrants already living inside the United States, and to analyze whether they are currently effective. Chapter IV will involve an analysis of The Comprehensive Immigration Reform Act, a proposed bill that addresses illegal immigrants inside the United States. The purpose of examining this policy is to evaluate whether or not it will likely be effective. These chapters will carry the bulk of research. Most of the research will consist of government reports, public articles, and academic books. These resources should provide the necessary background, overall effectiveness of policies, implementation issues of previous policies, and also counter-arguments and suggestions to each of the policies.

In conclusion, this thesis will attempt to shed light on some of the issues concerning illegal immigrants and to make recommendations for government policy that provides a path to success for those people who are already here, most of whom have provided critical service to our country’s economy.

II. LITERATURE REVIEW

A. REVIEW OF DEBATES REGARDING ILLEGAL IMMIGRATION

1. Economic Deficiencies

a. *Mismanaging Unemployment*

The unemployment rate is the “percentage of employable people actively seeking work out of the total number of employable people.”⁹ High unemployment can be a critical indicator of social stress in any capitalistic economy for many reasons; they include high employment creates fear and anxiety in market that reduces the amount of money people will invest in the economy, high employment often leads to welfare strain on the government because the private sector no longer provide social needs, and high employment often leads to economic recession.

During the “Great Depression” in the United States, the unemployment rate reached as high as 25%.¹⁰ The effects of the “Great Depression” sent shockwaves that altered the United States perception of Laissez-faire economics. Since then, the United States has actively sought to manage the economy so as to moderate unemployment. One of the ways in which the government manages unemployment is through immigration agreements with foreign countries. Immigration is a mechanism that is often used to manipulate labor shortages or overages that occur in any economy. This is accomplished through visa programs. For example, in times of high unemployment, visas are often limited.

In times of economic success, immigration is often viewed by citizens as beneficial. However, in times of economic uncertainty, citizens tend to demand closed borders. However, in a study published by the Cato Institute and the National Immigration Forum, they found “that immigrants do not increase the rate of native unemployment.”¹¹ There were many examples used to support their conclusions,

⁹ Bureau of Labor Statistics, “Unemployment Rate” definition (<http://www.bls.gov>), accessed January 20, 2007.

¹⁰ Robert VanGiezen, “Compensation from before World War 1 through the Great Depression,” Bureau of Labor Statistics (Fall 2001). Available at (www.bls.gov) accessed on February 2, 2007.

¹¹ Julian Simon, “*Immigration: The Demographic and Economic Facts*” (Cato Institute and National Immigration Forum, 1995) Available at (http://www.cao.org/pubs/policy_report/pr-nimmig.html) accessed February 16, 2007.

including: Muller study in Los Angeles in 1970s, Simon-Moore-Sullivan comparison of immigration and unemployment across cities in the United States, and Vedder-Gallaway-Moore Historical and Cross-Sectional Study.¹² These findings counter the idea that immigration adversely affects the employment of natives.¹³

Opponents of this view, like Dr. Donald Huddle, a Professor Emeritus of Economics at Rice University, argues that immigrants strain the welfare of the economy, take jobs from natives, and drive down wages.¹⁴ Dr. Huddle conducted a study in the United States in 1997. Overall, he found that immigrants displaced jobs from Americans, and that the economy did not create new jobs for the formerly employed native.¹⁵

Unfortunately, neither study differentiates legal immigration from illegal immigration in its findings, which in turn, reveals one of the biggest problems with illegal immigration. Illegal immigration is an inefficient system because it can not be measured. In order for the United States government to effectively manage unemployment, it must accurately account for its entire labor force. Illegal immigration side steps the regulatory process and puts the United States economy at risk because it beefs up a supply force without establishing exit strategies for times of negative growth.

For the past decade, immigrants have supplied half of the growth in the U.S. labor force.¹⁶ According to Bureau of Labor Statistics (BLS), “because natural population increase is unlikely to provide sufficient workers, immigration will play a critical role in sustaining the labor force growth needed to maintain overall economic growth.”¹⁷ Today, there are an “estimated 12 million unauthorized migrants in the United

¹² Simon, “*Immigration: The Demographic and Economic Facts.*”

¹³ Ibid.

¹⁴ Donald Huddle, comment on “MASS IMMIGRATION COST AMERICAN TAXPAYERS \$69 BILLION NET AND 2 MILLION JOBS IN 1997,” comment posted at www.carryingcapacity.o0rg/buddlenr.html , accessed February 2, 2007.

¹⁵ Ibid.

¹⁶ Doris Meissner; Deborah W. Meyers; and Demetrious G. Papademetriou, “*Immigration and America’s Future: A New Chapter, Report of the Independent Task Force on Immigration and America’s Future*” (Migration Policy Institute, September 2006), xiv.

¹⁷ Immigration Policy Center, “Economic Growth & Immigration; Bridging the Demographic Divide,” Immigration Policy Center Library, www.aifl.org/ipc/special_report/2005_bridging.pdf, accessed March 2, 2007.

States.”¹⁸ According to the Pew Hispanic Center, 700,000 unauthorized people entered the United States in 2004 alone.¹⁹ Over the past ten years, the entry of unauthorized immigrants has averaged 500,000 per year.²⁰

While unemployment in the United States remains relatively low in 2006, evidence in past decades indicates that there will be times of economic decline. How will the United States respond to high employment when it does not accurately know its labor force? Ultimately, how can the United States create any long-term plans to counter the threats of unemployment when it does not know how many are already here?

b. Reducing Illegal Incentives

Currently, there are no immigration policies that effectively address the incentives that drive illegal immigration. Illegal immigrants migrate to the United States for many reasons, including job opportunity, accessibility, and family networks. In a survey conducted by the Pew Hispanic Center, “the decision to migrate is influenced by the workings of family networks, perceptions of relative economic opportunity and other factors aside from socio-economic status.”²¹

First, there is a higher demand for illegal immigrants than there are available work visas. For example, “Of the 4.1 million new immigrant workers, between 1.4 and 2.7 million are estimated to be from illegal immigration. These findings suggest that illegal immigrants consist of almost 56 percent of the net increase in civilian employment in the United States over the past five years.”²² Unfortunately, those who meet the economic demands of the United States are forced to choose the illegal route. The United States needs to establish a legal route for those who desire work inside the

¹⁸ Jon Kyl, “Chairman. Legislative Notice: No. 37, S.2611 – Comprehensive Immigration Reform Act” (Calendar No. 414), 3.

¹⁹ Jeffrey S. Passel, “Unauthorized Migrants: Numbers and Characteristics,” *Pew Hispanic Center* (June 14, 2004), <http://pewhispanic.org/files/reports/46.pdf>, accessed March 1, 2007.

²⁰ *Ibid.*, 1–44.

²¹ Roberto Suro, “Attitudes toward Immigrants and Immigration Policy: Surveys among Latinos in the U.S. and in Mexico,” *Pew Hispanic Center*, (August 16, 2005), <http://pewhispanic.org/reports/report.php?ReportID=52>, accessed March 2, 2007.

²² Andrew Sum, Paul Harrington, and Ishwar Khatriwada, “The impact of New Immigrants on Young Native-Born Workers,” *Center for Immigration Studies* (September 2006), Available at <http://www.cis.org/articles/2006/back806.html>, accessed March 21, 2007.

United States that facilitates the labor needs of the economy. As long as Americans are unwilling to work in low-wage or otherwise unattractive sectors of the economy, there is going to be a high demand for unskilled labor that most likely exceeds the risks involved for choosing the illegal path. Currently, the United States has not attempted, besides citizen preferences on work applications, to provide economic incentives for its citizens to work the jobs only Mexicans are willing to work. If Americans do not desire these jobs, which many reports indicate, then the United States should establish immigration agreements with foreign countries that legitimately meet the demands of the market.

Second, the illegal market of labor in the United States remains too accessible to the Mexican population. Basically, those who can physically enter the United States can find some sort of employment. If not, they would not encompass 56% of the civilian labor market. Unfortunately, there are no qualifications, regulations, or processes that siphon the Mexican workforce that enter the United States each year. Instead, we are left with an unregulated system that has no accountability. The United States needs to set up an agreement with Mexico that restricts the undesired from entering the United States. If a visa agreement existed between the United States and Mexico, the United States could recruit specific talents to fulfill the specific needs of the economy.

Third, there are no policies in place that break down the family networks that exist between the unauthorized population living inside the United States and Mexico. According to the Pew Hispanic Center, “about one of every eight adults born in Mexico now lives in the United States.”²³ Family networks between Mexico and the United States are strong to say the least. Since there is currently no physical wall that separates the United States from Mexico, or any regulated immigration system in place, these family networks serve as the critical linkages for those who want to enter the United States illegally. Family sponsorship programs could reduce the social ties between the United States and the unauthorized population because families would come over together, rather than one-half remaining in Mexico.

²³ Sum, “The impact of New Immigrants on Young Native-Born Workers,”¹⁴.

c. Mexico's Heavy Reliance on Remittances

Mexico's heavy reliance on United States remittances is an economic deficiency for the United States as well as Mexico. In 2003, Mexican President Vicente Fox stated that "money sent from Mexican workers in the United States to their families back home has reached a record \$12 billion in 2003."²⁴

From an American standpoint, the federal government is missing out on billions of dollars of taxes that could be generated to offset the economic strain of illegal immigration. In addition, the income that is generated is leaving the United States economy, meaning, the money earned by these unauthorized communities is not being put back into the American economy.

Mexico's heavy reliance on remittances is an economic deficiency for Mexico because remittances will eventually decrease due to inevitable circumstances; they include: new amnesty laws, stricter enforcement of illegal immigration, legal work visas, and or, United States recessions. According to the National Population Council, "more than one out of 10 families—depends on remittances as their main source of income."²⁵ What will happen to these families, and the Mexican government, when these events decrease the amount of remittances sent back to Mexico? For example, after the Mexican Revolution, over 1 million Mexicans migrated to the United States.²⁶ A similar event could occur if the Mexican economy collapses. Mexico has become so reliant on remittances to the point that any real decrease in income may lead to further economic disaster in Mexico. These variables described above will decrease remittances back to Mexico. They are inevitable in the near future which could prove to have dramatic effects to United States economy because is no physical border that separates Mexico from the United States.

²⁴ Luis Alonso Lugo, "Remittances are Mexico's biggest source of income," San Diego Associated Press, September 24, 2003, Available at <http://www.signonsandiego.com/news/mexico/20030924-2051-us-mexico.html>, accessed March 21, 2007.

²⁵ Brenda Walker, comment on "Remittances Becoming More Entrenched: The Worldwide Cash Flow Continues to Grow, comment posted 2005, <http://www.limitstogrowth.org/WEB-text/remittances.html>, accessed February 16, 2007.

²⁶ Steve Boisson, "Immigration: The Last Time American Sent Her Own Packing," American History, September 2006, Available at http://www.historynet.com/magazines/american_history/3437881.html?page=4&c=y accessed March 22, 2007.

2. National Security Threats Posed by Illegal Immigrants

The attackers of 9/11 exposed many vulnerabilities of the United States, which in turn, have raised new security concerns. After 9/11, the United States realized that it could no longer rely on oceans, friendly neighbors, and negotiations among nation states, for national security. This is part due to the fact that a new enemy has emerged that has no allegiance to any country, wears no uniform, and does not operate in compliance to any local, international, military, or natural law. This has led to the formation of a new United States national strategy that requires accountability, regulation, and enforcement. According to the 9/11 Commission Report, “Countering terrorism has become, beyond any doubt, the top national security priority for the United States. This shift has occurred with the full support of the Congress, both major political parties, the media, and the American people.”²⁷

Illegal immigrants pose many potential threats to national security; they include aliens remain undocumented and unvaccinated.

a. Illegal Immigrants Remain Undocumented

Currently, the United States can not account for at least 5% of its entire population, or 15 million people.²⁸ According to the Pew Hispanic Center, this number increases every year by at least 500,000.²⁹ From a national security perspective, this poses a tremendous gap in national security because these people might consist of terrorists, sex offenders, spies, fugitives, and or, criminals. Out of the 4.5 million who entered the United States between 2000 and 2005, 350,000 illegal aliens had criminal records.³⁰

Considering the fact that the September 11 attacks on the World Trade Center required “no more than a thirty-person, two-year, half-million-dollar operation,”³¹

²⁷ 9/11 Commission, *The 9/11 Commission Report* (report to Congress regarding the September 11, 2001, attacks on the United States), 361, <http://www.9-11commission.gov/report/911Report.pdf>.

²⁸ Passel, “Unauthorized Migrants: Numbers and Characteristics”.

²⁹ Ibid.

³⁰ Buchanan, “*STATE of EMERGENCY: The Third World Invasion and Conquest of America*,” 8.

³¹ Bruce Schneier, *Beyond Fear: Thinking Sensibly About Security in an Uncertain World* (Copernicus Books, New York, 2003), 294.

15 million undocumented individuals present a tremendous unknown to national security. When examining the potential impact these people could pose, the economic impact of the September 11 attacks has resulted in hundreds of billions of dollars.³² Based on the assumption that the terrorism threat in the United States comes from the foreign population, the damage that was caused by 19 individuals sheds some light on the potential danger these 15 million people could pose to national security. Still, whether they pose a threat to national security or not, they remain undocumented, which means there is no physical data that holds them accountable for any of their actions which weakens the entire enforcement effort.

For the past five years, the United States has not successfully implemented any law that establishes accountability of illegal aliens.

b. Illegal Immigrants Remain Unvaccinated

Diseases, environmental hazards, and terrorist threats know no borders and dramatically affect our economy, our feelings of security, and our hope for the future.³³

In 2006, the Center for Disease Control and Prevention received \$6.2 billion, paid by American taxpayers.³⁴ The CDC mission is to promote health and quality of life by preventing and controlling disease, injury, and disability.³⁵ CDC allots \$1.7 billion in preventing infectious diseases every year.³⁶ These appropriations are spent on immunizations, vaccinations, and prevention. According to the CDC, routine childhood vaccination with these vaccines (DTap, Td, Hib, polio, MMR, hepatitis B, and varicella)

³² Donald Rumsfeld, comments on "Appropriations Committee Supplemental Hearing: Statement of Secretary Donald Rumsfeld, comment on September 24, 2003, http://www.globalsecurity.org/military/library/congress/2003_hr/03-09-24rumsfeld.htm , accessed December 21, 2006.

³³ Center for Disease Control and Prevention, "Budget Request Summary Fiscal Year 2007," Center for Disease Control and Prevention Budget, <http://www.whitehouse.gov/omb/budget/fy2007> , accessed March 21, 2007.

³⁴ Ibid., 1.

³⁵ Ibid., 5.

³⁶ Ibid., 2.

prevented over 14 million cases of disease and over 22,500 deaths over the lifetime of children born in any given year.”³⁷ According to Madeleine Peiner Cosman, “illegal aliens harbor fatal diseases that American medicine fought and vanquished long ago, such as drug-resistant tuberculosis, malaria, leprosy, plague, polio, dengue, and Chagas disease.”³⁸

Studies show that a significant proportion of success of disease control in the United States heavily relies on investment in health, mass participation, and local accountability. Other countries, particularly Mexico, do not invest the same in disease control as the United States. Unfortunately, these findings suggest that 500,000 unvaccinated people potentially expose the United States public every year. These people present potential threats to national security because they now encompass nearly 5% of the total population. Bacteria double inside the body every 20 minutes. How long will it take for these potentially exposed millions to infect the entire American public? Evidence of exposure along the border States suggest that it has already begun.

³⁷ Center for Disease Control and Prevention, “Budget Request Summary Fiscal Year 2007,” 14.

³⁸ Madeleine Peiner Cosman, “Illegal Aliens and American Medicine,” *Journal of American Physicians and Surgeons* (Spring 2005), <http://www.jpands.org/vol10no1/cosman.pdf>, accessed February 2, 2007.

III. 1986 IMMIGRATION REFORM AND CONTROL ACT

The current recession is now the worst since the Depression. In the fourth quarter of 1982, unemployment was close to 11 percent.³⁹

Congressional Budget Office
A Report to the Senate and House Committees

A. INCIDENT EXPLANATION

In the early 1980s, the United States economy began to suffer from a rise in unemployment, frequent and longer recessions, and increasing illegal immigration. According to the Congressional Budget Office, the economic problems of the early 1980s were the result of high interest rates, decline of GDP, inflation, and rise of unemployment.⁴⁰ With regards to the rise of unemployment, immigration policy took center stage. This was due to the increasing trends of illegal arrivals into the United States combined with the governments' inability to create "blue" and "white" collar jobs.

Immigration policy took the forefront of many debates, during the early 1980s, mainly because thousands of illegal immigrants continued to pour into the country while Americans continued to be unemployed. According to Passel, illegal immigrants made up 931 thousand in the United States in 1980.⁴¹ By 1983, the number of illegal immigrants more than doubled its amount to 2,093,000.⁴² The combination of a flat economy during the 1980s and the increase in illegal migration into the United States led to the 1986 Immigration Reform and Control Act, which was a bill developed to "effectively control unauthorized immigration in the United States."⁴³

³⁹ Alice Rivlin, "The Outlook for Economic Recovery: A Report to the Senate and House Committees on the Budget, part 1," Congressional Budget Office (GBO February 1983), 6.

⁴⁰ Ibid.

⁴¹ Ibid., 53.

⁴² Ibid., 36.

⁴³ The Immigration Reform and Control Act, S.1200 (The Library of Congress), 1. Available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d099:SN01200:@@@D&summ2=m&>, accessed February 2, 2007.

B. POLICY COMPONENTS

The 1986 Immigration Reform and Control Act (IRCA) was “an act to amend the Immigration and Nationality Act to revise and reform the immigration laws.”⁴⁴ It consisted of three major components; they include: Control of Illegal Immigration, Legalization, and Reform of Legal Immigration. IRCA was designed to increase efficiency in the labor market, institute accountability of the growing unauthorized public, and reverse the growing trends of unemployment.

1. Control of Unlawful Employment of Aliens

Controlling unlawful employment of aliens focused on the demand side of illegal immigration. Before IRCA, there was no enforcement measures that ensured employees were authorized to work inside the United States. In order to achieve control of unlawful employment of aliens, the United States made employment to unauthorized aliens unlawful. In Sec. 101, it states, “it is unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States.”⁴⁵ Under these laws, also referred to as “Employer Sanctions”, employers were constrained from hiring, recruiting, or employing illegal aliens.

The responsibility of employment verification heavily fell in the hands of the employer. Employers, under this program, would submit a form called “I-9” which was an obligatory agreement between the United States government and employers. This agreement was based around the assumption that verification of employees was being conducted under regulatory standards provided by the United States government. Basically, the employer was required to attest on this form “that the employee’s work status has been verified by examination of a passport, birth certificate, social security card, and alien documentation papers.”⁴⁶ The penalty for not complying with these agreements resulted in civil penalties that ranged from \$250 to \$10,000.

⁴⁴ The Immigration Reform and Control Act, 1.

⁴⁵ Ibid., 4.

⁴⁶ Ibid., 1.

2. Legalization of Illegal Aliens

Legalizing illegal aliens was an approach adopted to establish accountability, legalize those who are socially anchored in the United States, and deter those who would come in the future. IRCA provided a legalization program that adjusted the status of individuals who entered the United States unlawfully before January 1, 1982. The program outlined specific requirements to those who had qualified.

Unauthorized people, under this provision, had to apply within 18 months outlined by the Attorney General. Applicants had to physically show that they entered the United States before January 1, 1982, physically attest their continuous residence in the United States since 1982, and show that they understood basic American values including government, language, and history. Lastly, those applicants who had been convicted of felonies were not eligible for this program. People that qualified for this program were awarded “temporary resident” status. The entire process was purely voluntary.

3. Reform of Legal Immigration

The purpose of reforming legal immigration was to “separate temporary agricultural labor from other temporary labor for purposes of nonimmigrant (H-2A visa) worker provisions.”⁴⁷ As has been said, immigration is a tool often used by governments to manipulate labor shortages and overages. The Temporary Agricultural Worker initiative was designed to establish accountability for those who played a critical role in the United States economy. Temporary work visas and permanent residence was a “carrot and stick” approach to manage critical demands of labor.

In order to achieve this objective, the United States provided special status to those who fulfilled a critical role in the United States agricultural economy. Under the Special Agricultural Work program, also called (SAW), “aliens who could demonstrate that had 60 days of seasonal agricultural work experience in qualifying crops from May 1985 to May 1986 could apply for permanent residence.”⁴⁸ SAW addressed those who

⁴⁷ The Immigration Reform and Control Act.

⁴⁸ Betsy Cooper, “Lessons from the Immigration and Control Act of 1986,” *Migration Policy Institute*, no. 3 (August 2005). Available at http://www.migrationpolicy.org/pubs/PolicyBrief_No3_Aug05.pdf accessed March 21, 2007.

did not stay inside the United States on a continual basis. It was an attempt to keep the agricultural worker inside the United States, thus decreasing the demand for illegal demand for labor from Mexico.

C. EFFECTIVENESS OF POLICY

1. Employer Sanctions

The employment verification program was designed to de-incentive the “demand” side of labor by restricting, regulating, and enforcing the process of hiring personnel. However, in the end, employer sanctions did not prove to be very effective in deterring unauthorized people from the workforce, nor was it capable from preventing the employer from hiring unauthorized people. Instead, the employment verification process became more of a hindrance for most employers for many reasons; they include: employers were not trained to verify proper identification, there was no incentive for employers, and the program was not fully funded.

The biggest problem with employment verification was enforcement. Basically, there were no positive incentives for employers to participate in this program. Fraudulent identification made it hard for employers to effectively verify their employees. Also, a huge market of fraudulent identities emerged when the United States initiated this program. This was in part due to the fact that “employees could present 29 different documents to establish their identity and/or work eligibility.”⁴⁹ This led to a rapid and cheap market of identity fraud. According to GAO report to Congress regarding employment verification, “widespread availability of false documents made it easy for unauthorized aliens to obtain jobs in the United States.”⁵⁰ Unfortunately, the only people that could distinguish fraudulent identifications from authentic identifications were people who were highly trained, like those working for the Immigration and Naturalization Service, Immigrations and Customs Enforcement, and border patrol

49 “Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts,” June 19, 2006 (GAO-06-895T. GAO), 8. Available at <http://www.gao.gov/new.items/d05813.pdf>, accessed February 16, 2007.

50 Rivlin, “The Outlook for Economic Recovery: A Report to the Senate and House Committees on the Budget, part 1,” 7.

agents. Under IRCA, these people did not carry the burden of checking the authenticity of identification of employees. The sole responsibility still fell on to the employer.

In addition to the lack of proper training, there were no positive incentives for employers to take the extra time to verify their employees. For the most part these jobs consisted of unskilled manual labor. These people primarily consisted of young, Mexican, men who could not speak English. Instead, employment verification became a financial burden. There was a financial penalty for employers who did not cooperate with this program. Criminal prosecutions of employer sanctions violation were rarely carried out.⁵¹ IRCA simply required employers to fill out the appropriate forms attesting that they met the IRCA requirements: “The ‘I-9’ form made it very difficult for well-intentioned employers to insure that the documents were legitimate and easy for other to plausibly deny knowledge of workers undocumented status.”⁵²

In the end, employers were being held responsible for INS and ICE inefficiencies in budget. Employers neither had the time nor the expertise to properly check identification. “Of the \$123 million increase in the Immigration and Naturalization Service budget allocation from 1986 to 1987, \$33.7 million was dedicated to enforcing employer sanctions.”⁵³ Unfortunately, this increase in budget did not lift the burden off of the employer.

2. Establishing Accountability through Amnesty

Establishing accountability through amnesty was the most successful outcome of IRCA. Of the 3 million undocumented people in the United States in 1986, which the policy was designed to address, 2.7 million participated in the legal process of becoming a citizen. That equates to nearly 90% participation of all undocumented people.

Some advocates of IRCA argued that illegal immigrants only participated because they were being given a free ride to citizenship. However, studies have shown that

⁵¹ Rivlin, “The Outlook for Economic Recovery: A Report to the Senate and House Committees on the Budget, part 1,” 3.

⁵² Mark Roseblum, “U.S. Immigration Policy: Unilateral and Cooperative Responses to Undocumented Immigration,” Institute on Global Conflict and Cooperation, Policy Paper 55 (2000), 4. Available at <http://www.ciaonet.org/wps/rom01/> accessed on February 16, 2007.

⁵³ Rivlin, “The Outlook for Economic Recovery: A Report to the Senate and House Committees on the Budget, part 1”.

“immigrants granted permanent residence under IRCA naturalized at just over one-half the rate of other immigrants who came to live in the U.S. at the same time.”⁵⁴ IRCA was an incentive based program that provided a legal path to those who had worked in the United States on a continual basis for over 4 years. Unfortunately, the success of those who made the transition from agricultural workers to other fields was not the sole intention of IRCA. IRCA was developed to account for people for the purpose of his continual dedication in that critical field. When IRCA established the path to citizenship for aliens, it inadvertently promoted the American dream, which gave way for many. As a result of amnesty, IRCA had many unintended consequences; they include: the demand for agricultural labor increased due to job transition, new opportunities for illegal labor emerged due to the newly emerging lower class, and illegal immigration increased.

3. Labor Supply

One of the backlashes of the SAW program was its overwhelming response. Although some projected 250,000 participants in this program, nearly 1.3 million people applied.⁵⁵ SAW qualified too many aliens. This was in part due to those who had only worked 60-90 days of agricultural work in the past year were qualified under SAW. The provisions set under the SAW program were intended to keep the critical labor force inside the United States, thus decreasing the demand for aliens to cross into the United States.

Unfortunately, the proponents of SAW did not foresee the likelihood of aliens transitioning into other fields after completion of the program. This attempt by the United States government to deter illegal immigration by granting permanent residence to those who only worked seasonally inside the United States, inadvertently gave those people the opportunity to gain citizenship and more permanent job access. Consequently, once these illegal workers became citizens under SAW, many took on higher skilled jobs.

⁵⁴ Nancy Rytina, “IRCA Legalization Effects; Lawful Permanent Residence and Naturalization through 2001,” Office of Policy and Planning, United States Immigration Naturalization Service, October 25, 2002. Available at <http://www.dhs.gov/xlibrary/assets/statistics/publications/irca0114int.pdf> . accessed February 16, 2007.

⁵⁵ Ibid., 4.

D. LESSONS LEARNED

1. Lack of Comprehensive Strategy

Most of the shortcomings of IRCA can be traced back to its lack of comprehensive strategy, that is, its ability to address all different workings of illegal immigration. Some of these include the following: unregulated labor market, undesired labor market, and accessible labor market.

After IRCA was put into law, illegal labor remained unregulated. There were simply not enough agents or walls to restrict Mexicans from entering the United States. In addition, there weren't enough agents to verify employment, return unlawful aliens, or enforce immigration law. Instead, IRCA helped insure the success of illegal immigration by keeping illegal immigration open. Illegal immigration remained the cheapest way of doing business, financially opportunistic for foreigners, and accessible to nearly all who desired it.

In essence, proponents of the bill addressed the right actors but completely neglected the system. The system, or free market, is what drives illegal immigrants to the United States, not the latter. IRCA did not establish a system that legitimately facilitated the needs of the labor market. As a result, IRCA had little impact on illegal immigration. For example, "illegal aliens made up 21 percent of the foreign-born in 1980, 25 percent in 2000, and 28 percent in 2005."⁵⁶ Since the majority of all immigrants come from Mexico, amnesty only increased incentives and opportunities.⁵⁷

2. Implementation Failures

In July 2006, a hearing before the Subcommittee on Immigration Border Security, and Claims addressed some of the implementation failures of IRCA. Mr. Jeff Flake, a Representative in Congress from the State of California stated with regards to the failures of IRCA, "We need interior enforcement. But we also need to deal with those who are here illegally and we need to ensure that we have a legal framework for additional

⁵⁶ Steven A. Camarota, "Immigrants at Mid-Decade: A Snapshot of America's Foreign Born Population in 2005," December 2005, 1. Available at www.cha.wa.gov/english/documents/ImmigrantsatMid-Decade.pdf accessed February 2, 2007.

⁵⁷ Ibid., 10.

workers to come and return home. If we fail to do that, we will repeat the mistakes of 1986.”⁵⁸ Implementation failures often result from budget deficiencies or lack of financial incentive. IRCA was no exception to the rule. There was neither a budget equipped nor the incentive to effectively change the landscape of illegal immigration.

For example, in order for the employment verification program to effectively regulate its provisions during the late 1980s, it needed many things; they include: advanced technical infrastructure to track and account for the millions, sufficient supply of well-trained personnel to oversee the program across the nation, and well-defined laws that could be enforced by appropriate authorities.

These provisions were not laid out in the development of IRCA. IRCA was not funded respectively to the problems associated with illegal immigration. IRCA left oversight and accountability up to the employer without any incentive. In addition, IRCA provided a path of success for those who qualified but left the system broken for those that followed.

3. Unintended Consequences

There are two major unintended consequences of IRCA: increased demand in the illegal labor market and increased job opportunities for illegals.

Because of IRCA, nearly 2.7 million aliens ultimately received citizenship status in the United States. This was a tremendous success with regards to participation outcomes. Unfortunately, the United States did not anticipate the groups’ ability to transfer into different fields once citizenship was granted. The unintended consequence of IRCA created a vacuum because these people transitioned into legitimate businesses. This left the agricultural industry in high demand for labor.

When IRCA aliens assimilated into American society, they predominately transitioned into different fields. This had a tremendous impact on the United States labor market. For example, “on the supply side, high immigration since the 1980s and legalization in 1987-88 permitted Mexican-born workers to become significant

⁵⁸ “Should We Embrace The Senate’s Grant of Amnesty to millions Of Illegal Aliens and Repeat the Mistakes Of The Immigration From and Control Act of 1986,” Hearing before the Subcommittee on Immigration, border Security, and Claims, 8. Available at <http://judiciary.house.gov/media/pdfs/printers/109th/28781.pdf> accessed February 3, 2007.

components of the U.S. food processing, construction, service, and manufacturing labor forces thought the U.S. Welfare reforms and continued immigration promise to continue to add unskilled workers to the labor supply the 1992.”⁵⁹ Before IRCA, these jobs were predominately held by Americans. This opened up new markets to aliens, thus increasing their job opportunity in the United States.

⁵⁹ Agustin Escobar Latapi, Philip Martin, Paul S. Davies, Gustavo Lopez Castro, and Katharine Donato, “Migration Between Mexico and the United States; Factors that Influence Migration” (Morgan Printing, Austin, Texas, 1998), 165.

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IV. ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT OF 2002

It is elemental to border security to know who is coming into the country. Today more than 9 million people are in the United States outside the legal immigration system. We must also be able to monitor and respond to entrances between our port of entry, working with Canada and Mexico as much as possible.⁶⁰

– The 9/11 Commission Report

A. INCIDENT EXPLANATION

1. External Circumstances and Situation

Most policies regarding immigration prior to 9/11 were purely based on the economics of labor rather than national security interests. As a result, “since the September 11, 2001, terrorist attacks, policymakers have linked the issue of immigration, particularly unauthorized immigration, to homeland security.”⁶¹ When the Homeland Security Act was initiated in 2002, the Immigration and Naturalization Service (INS) fell under the newly established Homeland Security.⁶² Today, immigration policy, enforcement, and oversight, are functions of national security, initiated through the Homeland Security agency.

There were some inherent problems of immigration identified by the 9/11 Commission, including lack of interagency intelligence sharing between local, state, and federal agencies, weak immigration enforcement of pre-existing laws, and non-existent programs that monitor those who enter and exit the United States.

Soon after the events of 9/11, “The Enhanced Border Security and Visa Entry Reform Act” was created to counter these pre-existing problems of immigration, defined

⁶⁰ The 9/11 Commission Report, 390.

⁶¹ Andorra Bruno, “Immigration legislation and Issues” CRS Report to Congress, October 17, 2005, (RL33125), 2. Available at <http://fpc.state.gov/documents/organization/57223.pdf> accessed February 16, 2007.

⁶² Ibid.

by the 9/11 Commission. The policy components of the Enhanced Border Security and Visa Entry Reform Act have laid out the fundamental tools needed for any success in immigration reform.

B. POLICY COMPONENTS

The Enhanced Border Security and Visa Entry Reform Act of 2002 was an attempt to reshape regulations regarding national security that affect illegal immigration, including an increase in investment spending towards training and technological infrastructure, interagency information-sharing agreements between federal, state, and local law enforcement agencies, and the development and implementation of enter and exit programs. These efforts were initiated by Congress to enhance the United States ability to secure borders, prevent terrorist attacks, and control illegal immigration.

1. Interagency Information Sharing

Interagency information sharing is critical for any immigration reform because information regarding foreigners needs to be accessible to both Federal agents in Washington and to state and local law enforcement agencies. Interagency sharing is theoretically believed to increase Immigration Naturalization Service capability to “to screen applicants for admission to the United States, and to identify those aliens inadmissible or deportable under the Immigration and Nationality Act.”⁶³

The bill calls for the development of a “Chimera System,” which is a system that “provides current and immediate access to information in databases of Federal law enforcement agencies and the intelligence community that is relevant to determine whether to issue a visa or to determine the admissibility or deportability of an alien.”⁶⁴ The “Chimera System” is a security component of immigration reform designed to enhance enforcement of current laws.

⁶³ “Enhanced Border Security and Visa Entry Reform Act of 2002: TITLE II—INTERAGENCY INFORMATION SHARING; Sec 201.” Available at http://www.ofr.harvard.edu/additional_resources/Summary_of_Enhanced_Border_Security_Reform_Act_HR3525.pdf . accessed on February 3, 2007.

⁶⁴ Ibid.

2. Enter-and-Exit Programs

Immigration reform can not occur until the United States can effectively monitor those who enter and exit the country. In theory, “enter” and “exit” programs are designed to account for foreigners’ entrance and departure of the United States. In “The Enhanced Border Security and Visa Entry Reform Act of 2002” it states that the Attorney General and the Secretary of State shall “establish a database containing the arrival and departure data from machine-readable visas, passports, and other travel and entry documents possessed by aliens.”⁶⁵

One of the databases that was developed as a result of this bill is called the United States Visitor and Immigrant Status Indicator Technology program (US-VISIT), which is a system that “records the entry into and exit out of the United States of covered individuals; verifies the identity of covered individuals; and confirms compliance by covered individuals with the terms of their admission into the United States.”⁶⁶ US-VISIT is a regulatory system that is designed to “enhance security of our citizens and visitors, facilitate legitimate travel and trade, ensure the integrity of our immigrations system, and protect the privacy of our visitors.”⁶⁷

US-VISIT integrated many pre-existing systems, including Arrival and Departure Information system (ADIS); Passenger Processing Component of the Treasury Enforcement Communications System (TECS); Automated Biometric Identification System (IDENT); and Port of Entry (POE). All of these pre-existing systems act as feeder systems into a larger system of the US-VISIT which then gets verified and checked.

When looking at the United States visa policy, “covered individuals” need to provide the proper data including, biographic, travel, travel document, and biometric information (photographs and finger scans) in order to receive the proper identification card or visa. This information is then checked by watch lists databanks which are then ultimately added to new databanks. Once access is granted, there are automated systems that track the time on station, the place of residence, the purpose, and the travel of

⁶⁵ Enhanced Border Security and Visa Entry Reform Act of 2002.

⁶⁶ “US-VISIT Program, Increment 2.” Available at http://www.epic.org/privacy/us-visit/us-visit_pia.pdf accessed on February 3, 2007.

⁶⁷ Ibid., 2.

individuals. Once certain changes to status occur to school, work, and place of residence, there are flags that pop up which can then be seen by law enforcement and intelligence agencies.

C. EFFECTIVENESS OF POLICY

Unfortunately, the effectiveness of programs like US-VISIT, which provides enforcement tools designed to account for immigrants, have many challenges to overcome if they are going to be effective, especially intelligence sharing and local implementation issues. These challenges are heightened by economic strain on the private sector, lack of border enforcement, and ineffectual immigration policies.

1. Inherent Limitations

The US-VISIT program is a tool that enhances law enforcers' effectiveness to control immigration, but it has certain limitations. They include: its "human" model design, its reliability of input, participation rate, and border enforcement capabilities.

First, programs like US-VISIT are essentially data-mining programs that identify points of interest through human profiling. These points of interest are called data points. When the system receives data points that match suspected targets it flags indications and warnings to its operators. The US-VISIT system is set up to target criminals and terrorists. Ultimately, US-VISIT can only be as effective as its data points. However, similar systems have proved to be very effective at identifying potential targets. For example, the Computer Assistance Passenger Prescreening System (CAPPS) flagged 10 out of the 19 hijackers on 9/11.⁶⁸ Unfortunately, the private industry was responsible for airport screening prior to 9/11, which placed little emphasis on strict guidelines, protocols, or security repercussions. Still, if these passengers who were flagged on September 11, 2001, were forced to just board later flights as a precautionary measure, could they have been able to hijack four planes? For example, nine out of the ten hijackers on American Airlines were flagged with this system.⁶⁹

⁶⁸ The 9/11 Commission Report, 451.

⁶⁹Ibid., 451.

Second, there are limitations based off the reliability of information that gets input into the system. There are always loopholes around the creditability of information that gets inputted into any system. These include: fake identification, bribes, foreign spies, and lack of trained professionals. However, with the implementation of fingerprints and biometric testing in US-VISIT, there are monumental advances that have been made towards overcoming these weaknesses.

Third, how well other countries participate will ultimately determine the success of US-VISIT because countries that do not participate provide safe passage to those who want to come to American to do harm. As of now, there are allied countries such as Britain and Canada that are not required to comply with US-VISIT. This could prove to be very counterproductive for the US-VISIT system, especially because the London Bombers were British citizens.

All in all, the major limitation of US-VISIT relies on its effectiveness to account for all of those who come in, as well as all of those who are already here. These limitations include: accounting for the millions of unknowns who are already inside the United States, the lack of border control at points of entry, and illegal immigrants who come and go every year. Unfortunately, most of the limitations of the US-VISIT system are not associated with the actual system. For example, there are over 15 million immigrants living in the United States today, which comprise of nearly 5% of the total population. In addition, there are more than 500,000 illegal immigrants accumulating in the United States each year.⁷⁰ Even though there is a separation between legal and illegal immigration, the weakness in one affects the effectiveness in the other. The US-VISIT is limited by its ability to encompass the entire immigrant population that is already inside and those that will come into the United States. Until the United States Congress accounts for illegal immigration, there will be minimal effectiveness in US-VISIT because people will simply enter the United States in the least resistant point of entry.

⁷⁰ Edward Alden, "US illegal migrants up almost 500,000 a year," *Washington Post*, March 7, 2006. Available at <http://www.ft.com/cms/s/918e2a54-ae13-11da-8ffb-0000779e2340.html> accessed February 3, 2007.

2. Intelligence Sharing Issues

Employees of the Department of Homeland Security, Customs and Border Protection, Immigration and Customs Enforcement, United States Citizenship and Immigration Services, and the Department of State have access to the US-VISIT program and all of its encompassing information. In addition, “federal, state, local, tribal, and foreign government law enforcement law enforcement agencies”⁷¹ also share information. One of the major issues concerning intelligence sharing is the protection of the information that is being shared. Although the “covered individuals” are foreigners, there are still great concerns regarding privacy in the United States. This is in part due to the fear that this system will ultimately spill over into the privacy of American citizens. For example, in the case of Northern Ireland, Britain has a database that encompasses over one million people to potentially weed out a couple thousand.⁷²

Ultimately, the Department of Homeland Security is responsible for establishing and enforcing privacy policy, however, the overall responsibility of protection of intelligence falls under the Department of National Intelligence. The DHS information technology security policy outlines the requirements and standards for privacy. Some of these protective measures include, “strict rules of behavior for each major application, requires all users be adequately trained regarding the security of their systems, periodic assessment of physical, technical, and administrative controls to enhance accountability and data integrity.”⁷³

3. Local Implementation Issues

Local implementation of the US-VISIT program is essential for its effectiveness. One of the major problems with implementation is its economic strain on local agencies. For example, Student and Exchange Visitor Program (SEVIS), a feedback database for US-VISIT, falls under the schools’ budget. Some schools have been reluctant to participate due to the enormous economic strain that it imposes. The initial implementation of the US-VISIT program was limited to “only 2.7% of the foreign

⁷¹ US-VISIT Program, 3.

⁷² Tony Geraghty, *The Irish War; The Hidden Conflict between the IRA and British Intelligence*, (Johns Hopkin University Pr, November 2002), 133.

⁷³ US-VISIT Program, 11.

visitors entering the United States at land points of entry (POE).”⁷⁴ And yet, by 2006, “50 of the highest POE’s will be tracked by US-VISIT”⁷⁵ It is hard to say if this has been met, but time can only tell. And yet, citizens of some 27 countries including Europeans, Japanese, and Canadians are not subject to US-VISIT.”⁷⁶

All things considered, there are going to be holes within this technological system. The federal government has proposed to increase US-VISIT budget from \$340 million to \$390 million.⁷⁷ The funding increase will provide for the accelerated deployment of US-VISIT at the land borders and will enhance access for border personnel to immigration, criminal and terrorist information.”⁷⁸ Unfortunately, the overall budget for US-VISIT will require billions of dollars in the long run.

⁷⁴ Department of Homeland Security, Office of Inspector General, “Implementation of the United States Visitor and Immigration Status Indicator Technology Program at Land Borders Ports of Entry,” February 2005, 3. Available at http://www.globalsecurity.org/security/library/report/2005/OIG_05-11_Feb05.pdf accessed February 16, 2007.

⁷⁵ American Progress.org. Available at (<http://www.americanprogress.org/site/pp.asp?c=biJRJ8OVF&b=18894>) accessed December 2, 2006.

⁷⁶ American Progress.org.

⁷⁷ Homeland Security Official Website, Available at (http://www.dhs.gov/xnews/releases/press_release_0613.shtm) accessed on February 3, 2007.

⁷⁸ Ibid.

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V. PROPOSED COMPREHENSIVE IMMIGRATION REFORM ACT

For too long, the immigration debate has divided Americans of good will into two camps, those who are angry and frustrated by our failure to enforce the law and those who are angry and frustrated that our immigration laws do not reflect reality.⁷⁹

— Senator John Cornyn
Subcommittee on Immigration, Border Security and Citizenship, of the
Committee on the Judiciary

A. INCIDENT EXPLANATION

1. External Circumstances and Situation

Since the early 1980s, most United States immigration policies have failed to effectively manage illegal immigration, particularly from Mexico. In fact, according to the Pew Hispanic Center, illegal immigration has risen from 450,000 per year in the early 1990s to an estimated 700,000 per year in 2000.⁸⁰ According to most findings, this number is estimated to continue. Due to ineffectual policies, in April of 2006, the United States officially stated that at least 12 million unauthorized people living inside the United States.⁸¹

Immigration reform became a topic of more heated debate when it was discovered that all of the nineteen attackers on September 11, 2001, were immigrants living inside the United States. Addressing illegal immigrants became the forefront of many congressional hearings. Since then, old issues concerning illegal immigration have resurfaced and transformed into threats of national security.

⁷⁹Hearing before the Subcommittee on Immigration, Border Security and Citizenship, “The Need for Comprehensive Immigration Reform: Securing the cooperation of participating countries,” Available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_senate_hearings&docid=f:23250.pdf accessed February 3, 2007.

⁸⁰ Passel, “Unauthorized Migrants: Numbers and Characteristics,” 6.

⁸¹ Jon Kyl, “Comprehensive Immigration Reform Act,” April 24, 2006, Available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:SN02611:@@L&summ2=m&> accessed on February 3, 2007.

For the past several years, both Democrats and Republicans have been working towards a comprehensive strategy that addresses both, the problems associated with the current illegal immigration system, and illegal aliens already in the United States. This has resulted in two very distinct approaches regarding immigration control; they include: The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, and Comprehensive Immigration Reform Act.

The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437) was proposed and passed by the House of Representatives on December 15, 2005. The bill calls for many tough provisions that attempt to strike the balance between existing immigration laws and new enforcement challenges; they include: employer verification of employees, technical development of shared databases, deployment of more agents on border, construction of a physical wall along border, and stricter laws regarding alien removal and detention.

The bill does not differentiate between those already inside the United States and those who continue to migrate to the United States today. As a result, The Border Protection, Antiterrorism, and Illegal Immigration Control Act did not outline any legal path to foreigners who want to work in the United States, nor those already living inside the United States. The issue regarding what to do with the unauthorized community living inside the United States has crippled this bill. As a result, the United States Senate did not pass this bill. And yet, it remains one of the most significant attempts towards immigration reform since September 11, 2001.

The Comprehensive Immigration Reform Act (CIRA) takes a different approach to illegal immigration. In contrast to H.R. 4437, the policy encompasses a “front” and “back” door approach to the illegal immigration, that is, it addresses incentives that drive illegal immigration and illegal immigrants already living inside the United States. In the State of the Union in 2007, President Bush outlined the Comprehensive Immigration Reform strategy, he said,

We cannot fully secure the border unless we take pressure off the border and that requires a temporary worker program. We should establish a legal and orderly path for foreign workers to enter our country to work on a temporary basis. As a result, they won't have to try to sneak in, and that

will leave Border Agents free to chase down drug smugglers and criminals and terrorists. We'll enforce our immigration laws at the work site and give employers the tools to verify the legal status of their workers, so there's no excuse left for violating the law.⁸²

The approach outlined by the President focuses on both sides of the fence, that is, those who are already inside the United States and those who will come in the future. President Bush remains one of the strongest proponents of this bill. The Comprehensive Immigration Reform Act was passed by the Senate on May 25, 2006. To date, the bill has not yet become law.

B. POLICY COMPONENTS

The Comprehensive Immigration Reform Act, also referred as (CIRA), was initiated by Pennsylvanian Republican Senator, Arlen Specter. There are many important components of CIRA that make it comprehensive as a strategy; they include: interior enforcement measures, nonimmigrant and immigrant visa reform, and work authorization and legalization of undocumented individuals. These provisions are designed to aid the development of a legal framework that addresses the labor needs of growing economy, provides a legal path for those already inside the United States, and establishes an exit strategy to those who enter the United States in the future.

1. Changing Immigration Status for the Unauthorized Alien Population

In order to re-establish strict enforcement measures on preexisting laws, CIRA differentiates the unauthorized community into three separate groups; they include: unauthorized aliens who have resided in the U.S. for five years and worked three years, unauthorized aliens who have resided in the U.S. for two to five years, and unauthorized aliens who resided in U.S. for less than two years. By differentiating society based on time, the United States is able to enforce old laws on newcomers. These categories cover all illegal immigrants currently living inside the United States however, only those who arrived before April 5, 2001, qualify to stay in country.

⁸² State of the Union Address, 2007.

Group 1 consists of those who can show five years of residency and three years of employment in the United States. These applicants “will be granted Permanent Residency status after six more years of work.”⁸³ According to current laws regarding green cards, these participants could gain citizenship in five years. In total, the process of Group 1 gaining citizenship could be nine years, if married to an American citizen. Others, who do not marry American citizens, would ultimately wait an additional two years. Compared to the amount of time it takes for a green card holder to gain citizenship status, it will take Group 1 applicants two to four years longer.

Group 2 consists of those who can show proof of residency inside the United States between 2-5 years. These applicants will qualify for an H-2C work visa, which is temporary work visa outlined under the “Guest Worker Program.” These applicants are required to return to their place of origin before applying for an H-2C visa. Under the H-2C work visa, workers could participate in the green card process to gain United States citizenship.

The last category, Group 3, consists of those who entered the United States less than two years ago. These people are considered unauthorized, and thus deportable. Under this bill, these people are given no special treatment compared to those who enter the United States legally in the future.

2. Guest Worker Program

The “Guest Worker Program” (GWP) is a back door policy designed to sweep up all foreigners who desire future employment in the United States. GWP attempts to manage the labor market through a regulated employment processes; these include: small fee requirement, medical examination, job offer by applicant, and background check. In addition, in order to participate in GWP, employers must justify that unemployed Americans could not fulfill their unique demands. Family members of H-2C workers are welcome, but green cards can only be obtained by traditional means through this method. The GWP offers workers three years of temporary status in the United States. After

⁸³ Comprehensive Immigration Reform Act.

successful completion of H-2C, workers are required to return to the place of origin. Under the bill, 325,000 visas would be granted the first year.⁸⁴

3. “Ag Worker” Amendment

The “Ag Worker” Amendment is similar to the Seasonal Agricultural Worker program (SAW) developed by IRCA. For example, applicants who can show 150 days of work within the past two years can apply for a blue card. Those who qualify for a blue card, “and can demonstrate that they have worked in American Agriculture for an additional 150 work days per year for three years, or 100 work days per year for five years, they will then be eligible for a green card.”⁸⁵ There are only three major differences between the SAW and Ag Worker program; they include: longer time in work requirements, program caps, and back tax payment obligation.

4. Work Authorization Verification

Verification of employee is required under CIRA however, unlike IRCA; employers are only authorized to hire individuals with U.S. passports, green cards, social security card, and DHS documents. These documents all poses identification numbers that DHS will monitor and check. Under this provision, the burden of truth falls under the Department of Homeland Security. Under this bill, DHS is required to develop an electronic database, which in turn, will aid the effectiveness of verifying work authorization.

C. CHALLENGES THE PROPOSED POLICY WILL LIKELY FACE

1. How Many will Participate in these Programs?

The amount of people who participate in these programs will ultimately determine its overall success. There are many groups of people who contribute to the success of S. 2611; they include: the unauthorized alien community, the employers, and the Mexican government.

⁸⁴ Comprehensive Immigration Reform Act.

⁸⁵ Ibid.

a. *The Unauthorized Alien Community*

The unauthorized alien community consists of over 12 million people. Of these 12 estimated aliens, this bill only provides incentives to a portion. The number varies between experts, but according to The Heritage Foundation, “CIRA offers amnesty and citizenship to 85 percent of the nation’s current 11.9 million illegal immigrants.”⁸⁶ If a large portion of society qualifies under the terms defined by CIRA, then CIRA would most likely mimic some of IRCA’s outcomes. They include: high participation rates among alien communities, a labor shift among newly appointed citizens, and labor shortages in agriculture and unskilled sectors. These likely outcomes could be beneficial for the United States if the GWP establishes a legal path for future foreigners (reduces incentives for illegals), if the United States effectively removes undesired population (national security threats), and if the United States effectively manages unemployment.

b. *Employers*

Employment verification was considered a huge failure of IRCA. This was in part due to the fact that the majority of responsibility fell on the employer. Under CIRA, DHS carries the bulk of responsibility of verifying employment. CIRA has also lowered the amount of acceptable documents that may also ensure some increase in participation. Employers will most likely respond to GWP, but there are certain issues that remain undefined that may hinder their participation. They include: the financial penalties of hiring legal work versus illegal immigrants, the time it takes to verify employees, and legal process may not keep up with employer demands. These variables will affect the participation rate of employment verification.

c. *Mexican Government*

The Mexican government will most likely not comply with CIRA because of its heavily reliance on remittances from the United States. This is due to the fact that CIRA could decrease remittances dramatically in a relative short amount of time. CIRA grants amnesty to at least 70% of the total unauthorized population. These people, in

⁸⁶ Robert Rector. “Senate Immigration Bill Would Allow 100 Million New Legal Immigrants over the Next Twenty Years,” *The Heritage Foundation*, WebMemo #1076, May 15, 2006. Available at <http://www.heritage.org/Research/Immigration/wm1076.cfm> accessed February 16, 2007.

essence, will become American citizens through CIRA in the next six years. In addition, the GWP allows family members to join applicants. Without Mexican support, the GWP will most likely fall short in some aspects; these include: reducing national security threats from entering the United States, limiting border control capabilities, and reducing illegal incentives to cross border.

2. Implementation Issues

CIRA has many issues that may hinder its implementation success; they include: information sharing, financial strain, and technological challenges.

First, information sharing between countries and law enforcement agencies remains one of the biggest challenges CIRA faces when and if it is implemented into law. This is in part due to the fact that most countries, including the United States, are reluctant to share information about its own citizens. However, in order for GWP to an effective program, Mexico must agree and effectively share information regarding its citizens with the United States. For example, the US-VISIT program remains ineffective because most countries will not share information about its public with the United States, or any other country for that matter. Unfortunately, US-VISIT and similar enforcement tools are only as effective as the information put in. In other words, other programs like GWP, which also rely on sharing information, require Mexico's assistance in recruiting, regulating, and enforcing, the qualification standards desired by the United States. If Mexico does not agree to share information about its own citizens with the United States, wanted criminal and terrorists may continue to enter the United States.

Second, most programs introduced in CIRA involve heavy price tags. Similar programs in the past, like US-VISIT and SERVIS, have proven themselves to be financial burdens to the public sector, which has resulted in implementation reluctance. Implementing technical databases to enhance immigration must be funded, or promoted, by the federal government if it is to be implemented effectively. Most of the funding CIRA requires comes from the federal government; they include: GWP, electronic employment authorization verification, and DHS identification cards.

Without the full participation of all countries and agencies involved, gaps in security will likely result in loop holes, security breaches, and unintended consequences.

D. COUNTER ARGUMENT AGAINST PROPOSAL

One thing the temporary worker program would not do is provide amnesty to those who are in our country illegally. I believe that granting amnesty would be unfair, because it would allow those who break the law to jump ahead of people who play by the rules and wait in the citizenship line. Amnesty would also be unwise, because it would encourage waves of illegal immigration, increase pressure on the border, and make it more difficult for law enforcement to focus on those who mean us harm. For the sake of justice and for the sake of border security, I firmly appose amnesty.⁸⁷

– President George W. Bush

1. Arguments of Amnesty

The biggest challenge that faces IRCA initiation into law is its amnesty components. Much of the debate over amnesty stems from the prior failures of IRCA. IRCA granted amnesty to nearly 90% of the entire illegal population. Most proponents at that time felt that amnesty would solve the problems associated with illegal immigration. This of course did not happen. Since that time, any immigration policy that includes any type of amnesty has become frowned upon.

Opponents like Mark Krikorian, argue that immigration policy needs to be enforced not changed.⁸⁸ He argues under the assumption that immigration policy “is based on a false premise: Since the federal government can’t quickly deport the 10-12 million illegal aliens, the only alternative is legalization–i.e., amnesty.”⁸⁹ The Comprehensive Immigration Reform Act does grant amnesty to those that qualify for group 1. Other groups will fall under tradition means of citizenship. Unfortunately, the amount of people that will qualify for group 1 remains unknown. Some suggest CIRA

⁸⁷ President George W. Bush’s Radio Address, March 25, 2006. Available at <http://www.whitehouse.gov/news/releases/2006/03/20060325.html> accessed November 3, 2006.

⁸⁸ Mark Krikorian, “A Strategy of Attrition Through Enforcement,” Center for Immigration Studies Library. Available at <http://www.cis.org/articles/2005/back605.html> accessed November 2, 2006.

⁸⁹ Ibid.

will result in over 103 million citizens in a 20-year span.⁹⁰ Of the 103 million totals, 16 million individuals would receive amnesty.⁹¹

Proponents of amnesty acknowledge that it will not alone solve illegal immigration; however they believe it is essential for CIRA success. CIRA can only be effective if it affects those already living inside the United States. One of the tremendous successes of IRCA was its participation rate. The alien population in the late 1980s participated in IRCA because it was in their best interest. An immigration policy of this magnitude needs incentives for people to buy into it. Without amnesty, there will be no incentive for those already living inside the United States to come forward. The United States is not capable of rounding up 12 million people.

Amnesty and GWP have to happen simultaneously, in order for there to be any success in CIRA. Amnesty provides a legal path for the majority of those already inside the United States, while GWP provides a legal path for those who follow. If both work successfully, sovereignty will regain its legitimacy.

⁹⁰ Rector, "Senate Immigration Bill Would Allow 100 Million New Legal Immigrants over the Next Twenty Years."

⁹¹ Ibid, 2.

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VI. CONCLUSION

A. POLICY IMPLICATIONS AND RECOMMENDATIONS

Addressing illegal aliens already living inside the United States has been a long process that has evolved over time however; over the past twenty years, the United States has been unable to effectively account for those already inside the United States and manage those who enter illegally every year. Unfortunately, many of these attempts, including IRCA, lacked a comprehensive strategy which directly hindered the likelihood for any real change, and or, success. In order to effectively implement dramatic enforcement measures on pre-existing laws regarding immigration, there needs many specific provisions in place; they include: differentiations made between those who are already inside the United States and those who come in the future, enforcement capability to uphold current laws, and legal programs that facilitate the labor needs of the economy.

1. Differentiating the Unauthorized Community

First, we have to differentiate between those who entered the United States illegally in the past from those who will attempt to enter the United States illegally in the future. There are simply too many Americans guilty of violating previous immigration laws to enforce any strict new enforcement measures on them. They include: American children born from illegal parents, legitimate institutions who employed illegal immigrants including the United States government, and local businesses across the United States who still employ illegal labor. In addition, there are too many illegal aliens that actively participate in the economy. These factors make deportation of millions unlikely and unrealistic. All in all, since the United States does not have the capability to enforce old immigration laws against the majority of those already inside the United States. Differentiation of this community should therefore be based off time of arrival. Differentiating the alien community based off time also leaves no room for discrimination, and or, racism.

Based on the findings of previous policies like IRCA, amnesty is necessary because it provides incentives for people to participate. Fortunately, CIRA does different the unauthorized community and provides amnesty to those who qualify. The proposed

bill allows those who arrived prior to April 5, 2001, a legal path to citizenship that consists of a nine to eleven year process. There can be no success in any immigration reform without the voluntarily participation of the current unauthorized community. There are simply too many. Tracking down all the illegals in the United States would never work because there are too many Americans involved. Also, by participating in the amnesty process, these people will also differentiate themselves from the people who enter the United States illegally in the future. This may help future law enforcement capabilities because it will sever the communities' ties to Mexico which will rejuvenate pre-existing immigration laws. These people will no longer consider themselves the same as those who enter the United States illegally in the future. Instead, they will become law abiding United States citizens.

2. Enforcement Capability to Uphold Current Immigration Laws

Second, one of the downfalls revealed by IRCA was its inability to enforce policy. Enforcing immigration, in this day and age, requires many of the same components IRCA was unable to implement: accessible databases to local, State, federal law enforcers, enter and exit programs that maintain accountability, and documentation of all of those currently inside the United States. Fortunately, The Enhanced Border Security and Visa Reform Act of 2002 provided the necessary components needed for future immigration reform.

Local law enforcers must have reliable information about immigrants in order to enforce immigration policy. If people can continue to function inside the United States under the scope of society, then there will be no differentiation between those who have entered the United States illegally in the past from those who have just entered. Currently, local, State, and Federal agencies are required to share information about immigrants, but many local law enforcement agencies still remain out of the information loop. Unfortunately, access to intelligence requires special clearances. This remains a critical problem with interagency sharing because most civilians do not have "classified" clearances. This continues to be a problem. Continual efforts need to be made to ensure that all local law enforcement agents have the necessary information to enforce immigration laws.

This can be achieved through “Enter” and “Exit” programs. The United States is an open society but there needs to be a system in place that accounts for this population. Otherwise, people will continue to enter the United States through legal channels such as planes, boats, and cars. In order for these programs to be effective, all legal forms of transportation must be connected. Unfortunately, these programs place a tremendous financial strain on the private sector. We must provide economic incentives for schools, airports, and ports, to achieve full participation from the private sector. We must also reach agreements with other countries, particularly Mexico, to account for individuals who travel to the United States by plane, car, or boat.

The United States must have accountability of its population if there is going to be any effectiveness in law enforcement. Over 15 million people remain unaccounted. This creates gaps in enforcement capabilities because there is no way to separate the unauthorized community. CIRA provides incentives for the majority of these people, which could dramatically enhance enforcement capabilities.

3. Legal Programs Must be in Place to Facilitate the Labor Needs of the U.S. Economy

Third, the United States must establish a back door policy that legally facilitates the labor needs of the United States economy. Currently, it is estimated that 500,000 illegal aliens enter the United States each year. If we assume that 70% of these people maintain employment inside the United States, then 350,000 jobs per year are not legitimately being met by current work visas. CIRA offers a solution to this problem by implementing a guest worker program that caps at 325,000 its first year. In theory, this would legitimately meet the current economic demands. Unfortunately, this does not take into account the amount of people that will be required to leave after CIRA is implemented. This number remains unknown and will directly affect the success of guest worker programs.

Some argue that the guest worker program will contribute to millions of new citizens in the next 10 years. This may be true, but how is it different then the current green card processes of becoming a citizen? If these people legally enter the United States to work, then they should be granted the same chances at citizenship as the rest of foreigners applying for citizenship. If the United States government does not want to

grant citizenship, then it may have to look for a new population to fulfill its economic needs. Essentially, this is how immigration is intended to operate. At least this way, there would be no need for amnesty provisions down the road. Currently, the United States does not know how many will qualify for permanent residence under CIRA.

Opponents of guest worker programs should not debate whether or not there should be a legal framework for those who meet the economic demands of the United States. Instead, they should focus on the rules of the guest worker program, that is, the process by which they will become a United States citizen. Those who are concerned with the amount that will gain citizenship through GWP should work on provisions that develop longer waiting periods, or tougher qualifications.

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